Circuit Court for Baltimore City
Case No. 24-C-22-004663

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0595

September Term, 2024

CAROL HIPP

v.

MAYOR & CITY COUNCIL OF BALTIMORE, ET AL.

Arthur,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 27, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Carol Hipp, injured her left hip and femur when she fell while approaching a guard booth at Baltimore City's Highway Maintenance Division. She filed a civil claim in the Circuit Court for Baltimore City against Appellee, Mayor & City Council of Baltimore ("City"), alleging the City negligently failed to maintain its premises. Appellee filed a motion for summary judgment, and at the conclusion of a hearing, the court granted the motion. Appellant timely appealed.

We combine Appellant's two original questions for clarity: [1]

1. Did the circuit court commit reversible error by granting Appellee's motion for summary judgment?

The circuit court did not err, and thus, we affirm the judgment.

BACKGROUND

Appellant, Carol Hipp, received a notice from the State of Maryland advising her that her car's emissions testing needed to be completed. On September 30, 2021, she sought to comply with the notice and drove to a facility to have her car tested. She "believed she was in the general vicinity for the emissions testing station but could not locate it." Appellant parked by the guard booth at a building that had an entrance sign reading, "DEPARTMENT OF TRANSPORTATION" "Baltimore City" "6400 Pulaski Hwy." "Highway Maintenance Division." She stated that her intention was "to see if the

[1] Appellant presented the questions in her brief as follows:

1. Whether the circuit court committed reversible error by granting appellee's motion for summary judgement?

2. Whether the circuit court committed reversible error by determining that the appellant was a "bare licensee" or, possibly, a trespasser?

emissions testing was at that site or, if not, then to hopefully get directions to its location." Appellant exited her car "to find a guard or somebody that could give [her] directions" and noticed a man sitting inside the guard booth.[2] She "attempted to climb the steps [to the guard booth] and fell just as she was about to reach the landing."[3] Appellant injured her left hip and femur.

Appellee owns the Department of Transportation Highway Maintenance Division premises. Appellee answered in response to interrogatories that the Division "is not open to the general public, but only to City employees or other personnel." Photographs show the facility has a gate, a fence, and a guard booth. A sign on the fence stated "STOP" "VISITORS MUST REGISTER WITH GUARD" "Employees Must Show City ID."[4]

Appellant filed a negligence claim against Appellee in the Circuit Court for Baltimore City, alleging that the City "had a legal duty to keep the subject premises and its equipment, including the steps and landing at issue, in a reasonably safe condition for use by its citizens and invitees." She asserted the City was required "to exercise reasonable

[2] Appellant noted in her answer to interrogatory no. 4 that the "guard watched [her] at every moment from the time she got out of her motor vehicle, . . . but did nothing until after he watched [her] fall." Appellee countered in response to interrogatory no. 10 that the guard "advised [her] to not come up the steps to the guard shack after getting out of her car."

[3] The stairs consist of three risers and two treads with a concrete landing at the top of the stairs. A report from Jenway Contracting, Inc. identified code violations with the height of the third riser and the absence of handrails and railings. Appellant stated in her deposition that she fell before she reached the first step.

[4] Appellant alleges that the sign said "STOP" but the two photographs on E. 38 and E. 72 are blurry.

care to discover, correct or warn customers and invitees, including [Appellant], of any danger, hazards or defective conditions existing upon said premises." Appellant alleged she fell because "of a poorly constructed and maintained set of steps that lacked required handrails for the steps and its landing and which also had uneven risers; all of which constitute a serious fall hazard."

Appellee filed a motion for summary judgment arguing that it was not liable as the City had a duty only "to refrain from willfully or wantonly injuring or entrapping" Appellant, and there were no facts to support a claim that it willfully or wantonly injured or entrapped Appellant. Appellant responded, arguing she was "an 'invitee,' or at least, a 'licensee by invitation.'" She asserted that the "evidence demonstrate[d] both the existence of a defective condition and the City" had notice of the defect but failed to correct it or adequately warn others of the defect.

At the conclusion of the summary judgment hearing, the judge ruled:

> All right. I agree with the City in this case that the undisputed facts, even taken in the light most favorable to the Plaintiff, demonstrate that Ms. Hipp was, at best, a bare Licensee, and potentially a trespasser, but more likely a bare licensee because she – there's nothing that prohibited her from being at that point on the facility or premises.
>
> But I think the critical point here is whether the City has, either for its mutual benefit or by invitation, invited the public to go to that point. I note that Ms. Hipp not only drove up to the guard booth and got out, you know, approached -- was injured because she got on the stairs going up to the guard booth.
>
> So I find by the undisputed evidence that the Plaintiff[] do [sic] not prove that she was at a status any better than a bare licencee [sic] under these facts. And that given the standard that both parties agree goes with that status that the Plaintiff[] cannot prove any wanton or willful or entrapping conduct on the part of the City that would lead to liability in this case. In fact, the defect

> that is alleged is open and obvious to a person who decides to climb those stairs.
>
> And, therefore, the City is entitled to summary judgment on the undisputed facts that are shown by the statements of the parties and by the photograph of the facility where this accident occurred. So I will grant the City's motion.

Appellant timely appealed.

STANDARD OF REVIEW

The standard of review for an appellate court in examining a grant of summary judgment is *de novo*. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006). Accordingly, we conduct our own "'review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law.'" *Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 483 Md. 590, 616 (2023) (quoting *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022)). "'We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant.'" *Gambrill*, 481 Md. at 297 (quoting *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694 (2015)).

DISCUSSION

Appellant argues the case should be remanded for trial because the judge erred in identifying her as a bare licensee or trespasser and in granting summary judgment. She contends that under the mutual benefit theory or the implied invitation theory she "is certainly a member of the public and Appellee, as a governmental entity, is in the business of serving the public" and "there was nothing prohibiting Appellant from stopping to ask directions upon the premises at issue." Appellant argues the sign on the fence reading

"STOP" "VISITORS MUST REGISTER WITH GUARD" acted as an invitation to the general public to approach the guard booth. As an invitee or a licensee by invitation, Appellant argues the City owed her a duty to correct or warn her of any hazards or defective conditions on the premises.

Appellee contends that Appellant "was, at best, a bare Licensee, and potentially a trespasser" and that the City "did not invite, consent to, nor even encourage [Appellant] to enter the Maintenance Facility, let alone climb the steps. Moreover, the City did not receive any benefit from [Appellant] entering the Maintenance Facility, nor did [Appellant] serve any City interest in doing so." Appellee asserts, "the City only owed her a duty to avoid wanton or willful misconduct." Appellee posits that "the absence of a handrail on a couple of steps was not so extreme or outrageous that a reasonabl[e] jury could find that the City's conduct" breached its duty of care owed to Appellant as a bare licensee or trespasser.

Maryland Rule 2-501(f) provides that the "court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." "[W]hether one person owes a duty to another generally is a legal determination for the court." *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 206 (2021). If the issue depends on a determination regarding a dispute of material facts, the "facts should be determined by the jury." *Id.* A material fact is one that "will somehow affect the outcome of the case." *Arnold Dev., Inc. v. Collins*, 318 Md. 259, 261 (1990) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)). Facts, and reasonable inferences from those facts, "must be viewed in the light most favorable to the non-moving party." *Deboy*

v. City of Crisfield, 167 Md. App. 548, 554 (2006); *see also Windsheim v. Larocca*, 443 Md. 312, 326 (2015).

Here, the material facts are not in dispute. According to Appellant's deposition testimony, she went to Baltimore's Department of Transportation Highway Maintenance Division, a facility that had a guard booth, fence, gate, and sign that read "STOP" "VISITORS MUST REGISTER WITH GUARD" "Employees Must Show City ID." Appellant walked to the guard booth to ask her question and fell by the stairs which had no handrail, injuring herself. The parties agree that these are the material facts. They disagree, however, on Appellant's legal status while on the premises. As we see it, there being no material disputes of fact, the issue was properly before the circuit court for its legal determination. *See Davis*, 249 Md. App. at 206.

Generally, the standard of care that a landowner owes a visitor on his or her premises is determined by the visitor's status on the property. *Id.* at 207; *see also Deboy*, 167 Md. App. at 555. "An invitee is a person invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business." *Appiah v. Hall*, 416 Md. 533, 560 (2010) (quoting *Rowley v. Mayor and City Council of Balt.*, 305 Md. 456, 465 (1986)). Landowners owe invitees a "duty to use reasonable and ordinary care to keep the premises safe for the invitee and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for the invitee's own safety will not discover." *Davis*, 249 Md. App. at 207 (cleaned up). A licensee enters "another's land by virtue of the possessor's consent, for the licensee's own purposes"; whereas a trespasser is "one who intentionally and without consent or privilege enters another's

property." *Deboy*, 167 Md. App. at 557 (quoting *Crown Cork & Seal v. Kane*, 213 Md. 152, 157 (1957)); *Doehring v. Wagner*, 80 Md. App. 237, 244 (1989). Landowners owe licensees by invitation a duty to "'exercise reasonable care to make the premises safe for his guest or he must warn him of known dangerous conditions that cannot reasonably be discovered . . . by the guest.'" *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 321 (2019) (quoting *Bramble v. Thompson*, 264 Md. 569, 570 (1967)). Landowners do not owe bare licensees or trespassers any duty other than "to abstain from willful or wanton misconduct or entrapment." *Davis*, 249 Md. App. at 207 (citing *Richardson v. Nwadiuko*, 184 Md. App. 481, 489 (2009)).

There are two doctrines that analyze invitee status: mutual benefit theory and implied invitation theory. *Deboy*, 167 Md. App. at 555; *Nwadiuko*, 184 Md. App. at 489. The mutual benefit theory is applicable when a visitor enters a "business establishment for the purpose of purchasing goods or services." *Deboy*, 167 Md. App. at 555. This theory focuses on "the entrant's subjective intent, and whether the entrant intended to benefit the landowner in some manner." *Id.* The implied invitation theory, on the other hand, focuses on objective intent and "does not rely on any mutual benefit. Rather, the circumstances control, such as custom, habitual acquiescence of the owner, the apparent holding out of the premises for a particular use by the public, or the general arrangement or design of the premises." *Id.* (cleaned up). The implied invitation theory distinguishes "between mere passive acquiescence by an owner or occupier in certain use of his land by others and direct or implied inducement." *Id.* at 556. Under either theory, the landowner's duty is to use

reasonable and ordinary care to keep the premises safe and to protect the invitee from injury caused by an unreasonable risk.

A licensee is a person allowed on "another's land by virtue of the possessor's consent, for the licensee's own purposes." *Id.* at 557 (quoting *Crown Cork & Seal*, 213 Md. at 157). Maryland case law recognizes two forms of licensees: a licensee by invitation and a bare licensee. *Laser v. Wilson*, 58 Md. App. 434, 441 (1984). A licensee by invitation is a social guest on the property by the "express or implied invitation of the host." *Id.* "A bare licensee is one who enters the property of another with the possessor's knowledge and consent, but for the licensee's own purpose or interest." *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 110 (2000).

Here, the circuit court held, based on the undisputed facts, that Appellant was at least a bare licensee and potentially a trespasser. Based on its evaluation of the facts and caselaw, the court granted summary judgment. We agree.

Appellant's admission that she was on the premises for her own purposes precludes a legal determination that she was an invitee under the mutual benefit theory. Under that theory, the visitor must have been on the premises "to benefit the landowner in some manner and the theory focuses on "the entrant's subjective intent." *Id.* Appellant clearly testified she was there "to see if the emissions testing was at that site or, if not, then to hopefully get directions to its location."

Likewise, Appellant was not an invitee under the implied invitation theory. This theory analyzes objective intent and examines "custom, habitual acquiescence of the owner, the apparent holding out of the premises for a particular use by the public, or the

general arrangement or design of the premises." *Id.* Under this theory, courts are careful to distinguish "between mere passive acquiescence by an owner or occupier in certain use of his land by others and direct or implied inducement." *Id.* at 556. In the case at bar, there is nothing in the record to suggest Baltimore City by custom or habitual acquiescence held out the premises for use by the public. In fact, the record shows the opposite. There was a guard booth, gate, fence and a sign that warned people to stop.

Appellant also was not a social guest of the City when she entered the property. She drove onto the premises and parked her car in search of an emissions testing center. Appellant was neither expressly nor impliedly invited onto the property, and thus she was not a licensee by invitation. *See Laser*, 58 Md. App. at 441.

Appellant contends, in support of her argument that she was an invitee, that the City "as a governmental entity, is in the business of serving the public" and therefore its premises are impliedly open to the public. She argues that the City consented to visitors to the guard booth because of its proximity to the highway, its position right outside the fence on the property, and the sign that tells visitors to register with the guard. Appellant does not cite any cases in support of these arguments, and we have been unable to find any. The proximity of a building to a public road does not require a finding that the building is open to the general public. Moreover, when looking at the exhibits, the guard booth, the fence, the gate, and the sign that says "STOP," it is clear that the City did not intend to invite the general public onto the premises. The City did not extend an implied invitation or otherwise induce Appellant to enter their property.

Appellant cites *Macias v. Summit Management, Inc.*, 243 Md. App. 294 (2019) as pertinent to her argument. There, a child visited his grandparents at their condominium complex where he routinely played with his siblings in a grassy common area with a community sign made of stone by the entrance. *Id.* at 333-34. The common area had no signs or barriers preventing visitors from being in the common area or around the community sign. *Id.* at 333. The child climbed atop the community sign, fell, and was injured when one of the stones fell on top of him. *Id.* at 305. The child and his family sued under a premises liability theory for negligence, and the circuit court found that the child was a bare licensee. *Id.*

Our Court disagreed and held that the child was an invitee. *Id.* at 333. First, we held that where a "condominium association maintains control" over common areas, the condominium owners and their guests are invitees. *Id.* at 327. We noted the condominium owners admitted that they maintained the grassy common area. *Id.* at 328. We highlighted facts that indicated the child was allowed to be in the common area by the community sign, the child habitually played there, and there were no signs or barriers preventing the child from being around the community sign. *Id.*

In *Macias*, the child visited the premises with his family to see his grandparents who lived there. *Id.* The child habitually played in the grassy common area with his siblings when they visited. *Id.* The common area with the community sign had no barriers, like a fence or a gate, to prevent visitors from being on the grass or being near the community sign. *Id.* The common area had no signs asking visitors to stay away. *Id.*

Here, the premises for the Highway Maintenance Division had a guard booth, gate, and a fence to keep people out, not to expressly or impliedly invite the general public in. The sign that reads "STOP" "VISITORS MUST REGISTER WITH GUARD" "Employees Must Show City ID" is not a set of directions for the general public to approach the guard booth and ask questions for personal errands but instead is there to warn unpermitted visitors not to enter the facility. Appellant's suggestion that this sign serves as an implied invitation to the general public or as a set of directions for visitors to approach and ask questions is not a reasonable inference based on the facts in the record.

We hold that the court's grant of summary judgment was not error. There were no disputed material facts and as a matter of law, Appellant did not establish that she was more than a bare licensee. She further did not establish that the City exhibited wanton or willful conduct that would result in liability. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.